

APPENDIX A

Current Cluster Residential Housing By-Law

4.2 Cluster Residential Housing - Special Permit

Definition of Cluster Residential Housing (CRH) as follows:

Under Massachusetts General Law (MGL), Chapter 40A, Section 9, a Cluster Development shall mean a "residential development in which the buildings and their accessory uses are clustered together into one or more groups separated from adjacent property and from other groups within the development by intervening open land". To achieve the above, one or more residential clusters of greater local density than is otherwise permitted will be allowed, in a manner which creates an overall average density for the tract as a whole no greater than would occur under conventional subdivision development of the same tract. The land not included in the building lots shall remain as open space.

4.2.1 Applicability

Single tracts of land in one ownership consisting of ten (10) acres or more in the R-R district, or six (6) acres or more in the R-1, R-2, and R-3 districts, and to contain more than four (4) principal dwelling buildings, may be developed as Cluster Residential Housing (CRH) in place of the standard subdivision.

Development under this section requires a special permit and may also require subdivision approval under MGL, Ch. 41, by the Planning Board, as well as compliance with all requirements, provisions and conditions of the Shirley Zoning Bylaw.

4.2.2 Purpose

- a. To encourage the more efficient and economical use of land in harmony with its natural features, while preserving the overall density and the rural and historical character of the Town;
- b. To encourage the protection preservation of natural resources, including public and private groundwater supply;
- c. To encourage maximum flexibility and creativity in the design of developments;
- d. To encourage a less sprawling form of development with a shorter network of streets and utilities and other similar public installations, more rational development of land with less consumption of open space and focused on those portions most suitable for construction;
- e. To preserve to a maximum extent natural topography and woodlands, and to provide open land for conservation, agricultural, and outdoor recreational uses and recreational facilities close to homes;
- f. To implement the intent of the Town's Master Plan and Open Space Plan;
- g. To provide a more efficient procedure to ensure appropriate high quality design and site planning to enhance the neighborhood in which the development occurs and the Town as a whole;
- h. To promote diverse housing with consideration of size, cost, and other factors;
- i. To provide small residential communities within Shirley with opportunity for mutual support and shared responsibilities, yet with direct access to open land.

4.2.3 Use and Dimensional Standards

- a. The shape, dimensions and other aspects of the tract shall be sufficient to provide for open land, at least one cluster, and meet all other requirements of this section and of the Shirley Zoning Bylaw.

- b. A one-family detached dwelling, a two-family detached dwelling (duplex), or a multi-family dwelling or other lawful accessory building may be constructed on certain lots in a cluster development (as herein defined and limited) although such lots have less area, frontage, and/or rear and side yard dimensions than required under sections 3.1 and 4.1 above. Lots may be reduced in area from the minimum standard size requirement of the zoning district in which the tract is located, as approved by the Planning Board.
- c. Dwellings, accepted recreation facilities serving the development, maintenance facilities, accessory uses and facilities incidental to the principal uses may be situated on a single lot or on separate lots or on open land as approved by the Planning Board.

4.2.4 Maximum Number of Dwelling Units

The maximum number of dwelling units allowed on any tract shall be equivalent to the number of buildable lots into which the tract could be divided under normally applicable zoning and subdivision regulations within the given density zone, considering the whole tract, exclusive of water bodies, wetlands, and land prohibited from development by legally enforceable restrictions, easements or covenants. As used herein a buildable lot shall also contain sufficient and suitable percable area to site an in-ground septic disposal system. The number of dwelling units in multi-family cluster shall be as herein or as computed pursuant to Section 4.1 or a per building basis, whichever is less.

These buildable lots shall be shown on a preliminary "paper" subdivision plan conforming to the requirements of the Town of Shirley's "Subdivision Rules and Regulations". Such Preliminary Plan shall include a perimeter survey prepared by a registered land surveyor, location of wetlands delineated by a botanist or by the Shirley Conservation Commission and topography based on the most recent USGS map. The applicant shall demonstrate to the satisfaction of the Board and its consultants that the "paper" plan is "buildable" without extraordinary engineering techniques. The Board's determination of the Basic number of units shall be conclusive for all purposes.

4.2.5 Dimensional Requirements

- a. See footnote (1) under Section 3.1;
- b. A single cluster within any development shall be limited to a maximum of eight (8) multi-family or two-family principal buildings or sixteen (16) single family houses;
- c. No building shall be more than thirty-five (35) feet in height;
- d. A buffer zone of open land shall be maintained between building clusters and abutting land outside the project. A buffer shall also be left in its natural state or suitable landscaped to provide adequate screening toward the existing street. These buffer zones shall be maintained as dedicated open land or as privately owned lots with a fifty (50) foot depth in the R-R and R-1 districts and a forty (40) foot in the R-2 and R-3 districts. Minimum distance between all principal buildings shall be thirty (30) feet, and between each group of abutting clusters there shall be seventy-five (75) feet;
- e. Each lot shall be of a size and shape as shall provide a building site which shall be in harmony with the natural terrain and other features of the tract, provided that in no case shall the access frontage on a subdivision road be reduced below seventy-five (75) feet in the R-R district and fifty (50) feet in the R-1, R-2 and R-3 districts, and not less than forty (40) feet on turning circles or dead end streets in all zoning districts. There shall be no access to individual lots from existing public way;
- f. The front, side and rear yards of each lot shall be shown on said plan by dashed lines indicating the area within which a building may be built;
- g. Any parts of the tract lying within a W-1 or W-2 Water Overlay District zone shall not be built upon.

4.2.6 Design Requirements

- a. Vehicular and Pedestrian Circulation: primary routes shall be clearly differentiated from secondary routes and driveways; conflicts shall be minimized between vehicular routes and pedestrian routes and recreation areas;

- b. Screening: layout and design shall respond to needs for visual and audible privacy between and around dwelling units, and in all required buffer zones;
- c. Utilities and Services: utility lines shall be underground. Dumpsters shall be located in convenient locations, visually screened, and shall not impede pedestrian or vehicular circulation. The installation and location of drainage systems shall not impede access to common land;
- d. Protection of Environmentally Sensitive Areas: for the protection of aquifers, wetlands, or other environmentally sensitive areas, the Board may reduce the number of units otherwise allowed;
- e. Building Siting: the Planning Board shall review and approve the sites of all buildings, structures, driveways and parking areas for each lot and may establish footprints for all buildings within a cluster project. Privacy between units shall be a consideration;
- f. The housing shall be planned and developed to harmonize with any existing or proposed development in the area surrounding the project site;
- g. Treatment of the sides and rear of all buildings within the development shall be compatible in amenities and appearance to the treatment given to street frontages of these same buildings;
- h. The architectural theme of a multi-family building shall be carried out by use of compatible building materials, color, exterior detailing, bulk and articulation of roof lines to reduce scale and maintain compatibility with surrounding single family dwellings;
- i. No dwelling unit in any building of three (3) or more dwelling units shall be designed, constructed or altered to have more than three (3) bedrooms.

4.2.7 Landscape Design Standards

- a. A maximum of one-third (1/3) of the Residential Cluster Development, exclusive of dedicated common open land may be covered by impervious surface;
- b. Whenever appropriate, existing trees and vegetation shall be preserved and integrated into the landscape design plan. Suitable indigenous shrubs and other plant material may be used for screening;
- c. Whenever possible, the existing terrain shall be preserved and earth moving or removal shall be kept to a minimum;
- d. For active recreation areas, the Planning Board may require a fifty (50) foot buffer zone around such area(s);
- e. Lands used as buffers may be retained as common open space or as private open space subject to a deed restriction.

4.2.8 Road, Parking and Circulation Standards

- a. Roads must be constructed to the standards established by the Subdivision Regulations of the Planning Board except as may be specifically waived by said Board;
- b. There shall be adequate, safe and convenient arrangement of pedestrian circulation facilities, roadways, driveways and off-street parking;
- c. Off-street parking shall conform to the provisions of Section 5 of the Zoning Bylaw;
- d. Parking facilities shall be designed with careful regard to arrangement, topography, landscaping, ease of access, and shall be developed as an integral part of an overall site design.

4.2.9 Common Open Space

- a. Provision shall be made so that at least thirty-five (35) percent of the land area shall be open land and that open land shall include all land not dedicated to parking, roads or individual lots;
- b. Areas which are considered by the Planning Board as marginal or unsuitable for building may be included in the permanent open space; but, not more than thirty-five (35) percent of the required open space shall consist of such marginal or unbuildable areas. At least ten percent (10%) shall consist of land suitable for recreational purposes;
- c. Open spaces may be utilized as natural courses for disposal for storm drainage on the sites. No conditions shall be allowed which are likely to cause erosion or flooding of any structures;
- d. Such open space may be in one or more parcels of a size and shape appropriate for its intended use as determined by the Planning Board, and shall be within easy access to all residents of the Residential Cluster development.

4.2.10 Ownership of Common Open Space

- a. The open land, and such other facilities as may be held in common shall be conveyed in one of the following manners, as approved by the Planning Board:
 1. To a corporation or trust comprising a homeowner association whose membership includes the owners of all lots or units contained in the tract. The developer shall include in the deed to owners of individual lots or units beneficial rights in said open land, and shall grant a conservation restriction to the Town of Shirley over such land pursuant to MGL, Ch. 184, Sec. 31-33, to insure that such land be kept in an open or natural state and not be built upon for residential use or developed for accessory uses such as parking or roadways. This restriction shall be enforceable by the Town through its Conservation Commission in any proceeding authorized by MGL, Ch. 184, Sec. 33. In addition, the developer shall be responsible for the maintenance of the common land and any other facilities to be held in common until such times as the homeowners association is capable of assuming said responsibility. In order to ensure that the association will properly maintain the land deeded to it under this section, the developer shall cause to be recorded at the Middlesex Registry of Deeds a Declaration of Covenants and Restrictions which shall, at a minimum provide the following:
 - a. Mandatory membership in an established homes association, as a requirement of ownership of any lot in the tract;
 - b. Provisions for maintenance assessments of all lots or units in order to ensure that the open land is maintained in a condition suitable for the uses approved by the homes association. Failure to pay such assessment shall create a lien on the property assessed, enforceable by either the homes association or the owner of any lot;
 - c. Provision which, so far as possible under existing laws, will ensure that the restrictions placed on the use of the open land will not terminate by operation of law;
 - d. The right of the homeowners association to limit open space to its members.
 2. To a non-profit organization, the principal purpose of which is the conservation of open space. The developer or charity shall grant a conservation restriction as set out above. Maintenance will be the responsibility of the recipient organization;
 3. To the Town for park or open space use, subject to the approval of the Selectmen for management by the Conservation Commission, with a trust clause insuring that it be maintained as open space.

4.2.11 Other Open Space Uses

Subject to the above, the open space may be used for recreational purposes including golf courses, riding trails, tennis courts, gardens and swimming pools. The Board may permit open land owned by a homeowners association to be used for individual septic systems, or for communal septic systems if it, and the Board of Health, are convinced that proper legal safeguards exist for proper management of a communally owned system. The Planning Board shall require adequate insurance and covenants that such facilities shall be maintained by the unit owners.

4.2.12 Driveways

Driveways shall be owned and maintained by the homeowners association, otherwise by individual unit owners served by those driveways.

4.2.13 Further Requirements in Clustered Residential Housing

- a. No use other than residential or recreational shall be permitted;
- b. No lot shown on a plan for which a permit is granted under this section may be further subdivided, and a notation to this effect be shown upon the plan;
- c. No certificate of occupancy shall be issued by the Building Inspector until he has certified to the Planning Board that the premises have been built according to the plan approved by the Board hereunder;
- d. The Planning Board may impose other conditions, safeguards, limitations on time and use, pursuant to its regulations;
- e. Except insofar as the subdivision is given five (5) years' protection under MGL, Ch. 40A, Sec. 6, the Special Permits granted under this section shall lapse within two (2) years excluding time required to pursue or await the determination of an appeal from the grant thereof, if a substantial use has not sooner commenced or if construction has begun, except that the Planning Board may grant an extension for good cause;
- f. Subsequent to granting of the permit, the Planning Board may permit relocation of lot lines within the individual cluster. However, any change in overall density, street layout or open space layout will require a further hearing;
- g. Except as specified in a Special Permit granted under this section, all requirements of the Zoning Bylaw shall be in full force and effect;
- h. In the interest of water supply protection, the Planning Board may impose, on a case-by-case basis, specific design and/or performance standards necessary to ensure that the proposed use is in harmony with the stated purposes of this Bylaw. Periodic monitoring may be required by the Board as a condition of the Special Permit. Such monitoring may include sampling of the wastewater disposed to on-site septic systems or drywells and sampling from ground water monitoring wells to be located and constructed as specified in the Special Permit. Reports shall be submitted to the Planning Board and to the Board of Health annually, and the costs shall be borne by the owners of the premises.

4.2.14 Procedure

To afford the Town of Shirley ample assurance that such developments will enhance the amenities of the neighborhoods in which they occur, and the Town as a whole, Cluster Residential Housing may only be constructed under a Special Permit granted by the Planning Board as hereinafter defined.

Applications for a Cluster Development Special Permit shall be submitted in accordance with the requirements specified below:

1. Preview: before submitting a formal application for a Special Permit under this article, the applicant is encouraged to meet informally with the Planning Board, Board of Health and the Conservation Commission together or separately to present informally the general concept of the development, and hear the concerns of the Town that should be considered in the design of the development;
2. Filing Application: Each application for a Special Permit to cluster shall be filed with the Planning Board, with a copy filed forthwith with the Town Clerk, and shall be accompanied by twelve (12) copies of the plan of the entire tract under consideration, prepared by a registered professional architect, engineer or landscape architect. The Planning Board requires a separate filing under its subdivision control law where necessary. A Special Permit issued hereunder by the Planning Board shall not be a substitute for compliance with the Planning Board Rules and Regulations or the Subdivision Control Act. However, in order to facilitate processing, the Planning Board may accept a combined plan and application which shall satisfy this section, the Planning Board Rules and Regulations and the Subdivision Control Act.

4.2.15 Contents of Application

The application and plan shall be prepared in accordance with the requirements for a subdivision plan in the Rules and Regulations of the Planning Board governing subdivision of land, whether or not the development constitutes a subdivision and shall include proposed location, bulk, and height of all proposed buildings. The applicant shall provide the following:

- a. The "paper" plan as specified in 4.2.4 above;
- b. A cluster plan indicating the location of proposed buildings, roads, driveways, parking, drainage, reserved open space, wells, on-site sewage disposal facilities, grading, wetlands, areas of retained vegetation and perimeter buffer areas and planting;
- c. An analysis of the site, including wetlands, slopes, soil conditions, areas within the Hundred Year Flood, trees over eight (8) inches diameter in the development area and such other natural features as the Planning Board may request;
- d. Sketch floor plans and architectural elevations of typical dwellings proposed, including building material, building and site landscaping, streets, drives and parking provisions;
- e. Drafts of any proposed deeds, easements and/or restrictions including:
 1. Proposed deed for transfer of dedicated land in fee simple to the municipal/state/federal/or private non-profit organization; or alternately,
 2. Proposed covenants and restrictions as detailed in Sec. 4.2 to secure the permanent legal existence of dedicated open land. Approval of a cluster development plan shall require the approval by the Planning Board of said covenants or restrictions.
- f. An environmental impact analysis related to the proposed plan, as defined by the Planning Board's Subdivision Rules and Regulations for a subdivision plan;
- g. A description of the neighborhood in which the tract lies, including utilities and other public facilities, and the impact of the proposed plan upon them;
- h. Evaluation of the dedicated open space proposed within the cluster development, with respect to size, shape, location, access, natural resource value and accessibility by residents of the development or the Town;
- i. Anticipated marketing and construction schedules;
- j. Management program outlining the community organization, if any, and the transition procedure from developer management to community association management;
- k. Appropriate documentation demonstrating the applicant's right to develop the property;

- l. Engineering data showing effects both on and off site of the proposed development on natural recharge of the groundwater, yield from abutter's private wells and quality of surface and groundwater. Information on impact on groundwater quality should include data on groundwater runoff, recharge, background water quality, on-site septic systems and other on-site operations, including use of pesticides, fuel, toxic materials, hazardous materials and fertilizers used in conjunction with the proposed development;
- m. The Planning Board may at its discretion modify some of the requirements of Section 4.2 which could be detrimental to design flexibility related to a specific site, or might be excessive on small projects;
- n. Review by other boards: before acting upon the application, the Board shall submit plan documents to related boards, which may review it jointly or separately, including the Board of Health, and the Conservation Commission. Any such board or agency to which petitions are referred for review may submit such recommendations as it deems appropriate to the Planning Board. Failure to make recommendations within thirty-five (35) days of receipt shall be deemed lack of opposition;
- o. Public Hearing: the Planning Board shall hold a hearing under this section, in conformity with provisions of the MGL, Ch. 50A, Sec. 9, and of the Zoning Bylaw and regulations of the Planning Board. The hearing shall be held within sixty-five (65) days after filing of the application and plans with the Board and the Town Clerk. Notice shall be given by publication, posting and by first-class mailings to parties in interest as defined in MGL, Ch. 40A, Sec. 11. The decision of the Board and any extension, modification or renewal thereof, shall be filed with the Board and Town Clerk within ninety (90) days following the closing of the public hearing. Failure of the Board to act within ninety (90) days shall be deemed a grant of the Special Permit. Issuance of the Special Permit requires approval by vote of four (4) voting members.
- p. Findings of the Board:
 1. The Board may grant a Special Permit for a Cluster development project under this section only if it finds that the applicant has demonstrated the following: that the cluster plan will be in harmony with the general purpose of the Zoning Bylaw and meets all its relevant requirements as well as those of MGL, Ch. 40A, and the Shirley Master Plan; that it will not have a detrimental impact on the neighborhood, will be designed with due consideration for health and safety, and is superior to a conventional plan in reserving open space, minimizing environmental disruption, allowing for more efficient provisions of services, or allowing for greater variety in prices of types of housing, including affordability;
 2. In connection with issuing or denying a Special Permit under this section, the Planning Board shall issue to the applicant and shall file with the Town Clerk a written decision which shall include:
 - a. Reference to the proposed cluster development application and its plans;
 - b. A finding that the plan is or is not in harmony with the purposes and intent of the Zoning Bylaw, especially this section;
 - c. A list of any conditions imposed by the Planning Board.
 3. Reasons, if any, of the Planning Board disagreement with the recommendations of the Conservation Commission or the Board of Health;
 4. No building permit shall be granted for any building in the cluster development until all documents required, including prepared deeds, easements, covenants, and/or restrictions have been submitted to and approved by the Planning Board: and further that all documents including the Special Permit and Definitive Plans, if any, have been recorded in the Registry of Deeds and proof of the recordation furnished to the Planning Board.